

LAW OFFICES
CATALANO & PLACHE, PLLC
3221 M Street, N.W.
Washington, DC 20007
—
Telephone (202) 338-3200
Facsimile (202) 338-1700

March 24, 2004

Via Electronic Delivery

Marlene H. Dortch, Secretary
Office of Managing Director
Federal Communications Commission
445 12th Street, SW
Room TW-B204
Washington, DC 20554

Attention: Wireline Competition Bureau

Re: Nextel Partners of Upstate New York, Inc. d/b/a Nextel Partners
Supplement to Petition for ETC Designation in the State of New York
CC Docket No. 96-45, DA 03-2329

Dear Secretary Dortch:

Nextel Partners of Upstate New York, Inc. d/b/a Nextel Partners (“Nextel Partners”), by its undersigned counsel, hereby submits a “Supplement” to its above-captioned Petition for Designation as an ETC in the State of New York, filed on April 3, 2003 in CC Docket No. 96-45 (“Petition”) in response to the Commission’s recent Memorandum Opinion and Order in the *Virginia Cellular* proceeding.¹ As supplemented herein, Nextel Partners’ Petition presents no new or novel issues for consideration and

¹ *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338 (rel. January 22, 2004) (“*Virginia Cellular Order*”)

Marlene H. Dortch
Secretary
Federal Communications Commission
March 24, 2004
Page 2 of 15

therefore may be decided fully within the decisional framework established by the Commission in the *Virginia Cellular Order*. Based on the record of this proceeding, the Commission should grant Nextel Partners' Petition expeditiously.

Nextel Partners hereby supplements its Petition with the following information and commitments:

1. Adoption of the CTIA Consumer Code for Wireless Service

The wireless industry is a competitive industry, where market forces have been allowed to shape customer service. The Commission has recognized, however, that the CTIA Consumer Code for Wireless Services (the "CTIA Consumer Code") contains important customer protections, and that the adoption of those standards demonstrates a wireless ETC's commitment to customer service and service quality consistent with the public interest.² Nextel Partners will adopt the CTIA Consumer Code where it is designated as an ETC. A copy of the CTIA Consumer Code is attached as **"Exhibit 1"** hereto. Nextel Partners believes that that its formal adoption of and compliance with the CTIA Consumer Code will allow Nextel Partners to further enhance its industry-leading reputation for customer satisfaction and retention.

² See *Virginia Cellular Order* at ¶ 30.

Marlene H. Dortch
Secretary
Federal Communications Commission
March 24, 2004
Page 3 of 15

2. Annual Consumer Complaint Reporting

In the *Virginia Cellular Order*, the Commission also required the annual reporting of consumer complaints per 1000 handsets.³ Nextel Partners commits to providing the Commission and the Universal Service Administrative Company (“USAC”), on an annual basis, with a report of the number of consumer complaints per 1,000 handsets for the preceding year. This “Annual Consumer Complaint Report” will be filed with USAC and the Commission on October 1 of each year, beginning with the year in which Nextel Partners is designated as an ETC in New York. Together with its Annual Consumer Complaint Report, Nextel Partners will also provide the Commission with the name, address and telephone number of a point of contact to address any customer service or service quality complaint received by the Commission. The designated contact person will have access to customer account information and the authority to resolve customer service issues.

3. Service Provisioning Commitment

To provide assurance to the Commission that Nextel Partners will respond to reasonable requests for service within its designated service territory, upon designation as an ETC in New York, Nextel Partners will implement the following steps, which were presented by Virginia Cellular and accepted by the Commission:⁴

³ See *Virginia Cellular Order* at ¶ 30.

⁴ See Virginia Cellular, LLC November 12, 2003 letter amendment in CC Docket

Marlene H. Dortch
Secretary
Federal Communications Commission
March 24, 2004
Page 4 of 15

1. If a request comes from a potential customer within its existing network coverage, Nextel Partners will provide service immediately using customer equipment selected by the customer. In practice, if Nextel Partners receives an Internet or phone order for a handset and service plan prior to 4:00 p.m., the phone is delivered to the customer by overnight mail the following morning.

2. If a potential customer within Nextel Partners' designated service territory cannot be served by existing network facilities, Nextel Partners will take a series of steps in response to the request for service:

First, Nextel Partners will determine whether the potential customer's equipment can be modified or replaced to provide service in the requested location.

Second, Nextel Partners will determine whether the customer could be provided with other network equipment (booster, antenna, or 3 watt unit) to enable provision of service in the requested location.

Third, Nextel Partners will determine whether adjustments at the cell site nearest the requested location can be made to enable provision of service.

Fourth, Nextel Partners will determine whether there are any other adjustments to either the network or the customer facilities that can be made to provide service.

Fifth, Nextel Partners will determine whether it can offer resold service from another carrier that has facilities available to provide service in the requested location.

Sixth, Nextel Partners will determine whether additional network infrastructure (additional cell site, extender or repeater) could be constructed to provide service, and evaluate the costs and benefits of using high-cost universal service support to serve a number of customers requesting service.

Marlene H. Dortch
Secretary
Federal Communications Commission
March 24, 2004
Page 5 of 15

3. If, after all of the foregoing steps have been completed, Nextel Partners determines that the customer cannot be served, Nextel Partners will so notify the customer and provide the Commission and USAC with an annual report of how many requests for service could not be filled.

4. Nextel Partners' "Annual Report of Unfilled Service Requests" would be filed with the Commission and USAC on each October 1, beginning in the year in which Nextel Partners obtains designation as an ETC in New York. The Commission would retain jurisdiction and authority to consider whether Nextel Partners has responded appropriately to a request for service.

The formalization of this process will benefit consumers and provide the Commission with the requisite assurance that that Nextel Partners will thoroughly and systematically respond to reasonable requests for service within its designated service territory.

4. Use of Support and Progress Meeting Buildout Goals

a. Construction Plans

The Commission's rules provide a mechanism for ensuring that all ETCs are using support for the purposes for which that support is intended. Nextel Partners will comply with all applicable rules addressing those standards. In accordance with the Commission's *Virginia Cellular Order*, Nextel Partners hereby submits specific Construction Plans for its designated service territory in New York to demonstrate its projected use of USF High Cost Program funds to improve its network facilities, and reach out to areas that it does not currently serve. Nextel Partners' Construction Plans for New York are set forth in **Exhibit 2** hereto. The Construction Plans reflect Nextel

Marlene H. Dortch
Secretary
Federal Communications Commission
March 24, 2004
Page 6 of 15

Partners' projected 2004 capital budget for the Designated Areas, and include site modification and switch capital expenses. Nextel Partners' Construction Plans demonstrate that its projected budget for construction in its Designated Areas in New York will far exceed the estimated amount of USF subsidies it will receive upon grant of ETC status.

b. Annual Progress Report

As the Commission is aware, consumer demand may shift over time, requiring the planned deployment of cell sites and other network equipment to be adjusted. To track such adjustments, and to detail its "progress in meeting its build-out plans in the service areas it is designated as an ETC,"⁵ Nextel Partners will submit information annually to the Commission and USAC. The Commission recognized that this commitment would provide important information that could be used to evaluate an ETC's progress towards meeting its obligation to provide service throughout a service area.⁶ Nextel Partners "Annual Construction Progress Report" will be filed with the Commission and USAC on October 1 of each year, commencing with the year in which Nextel Partners is designated an ETC in New York.

⁵ See *Virginia Cellular Order* at ¶ 46.

⁶ See *Virginia Cellular Order* at ¶ 30.

Marlene H. Dortch
Secretary
Federal Communications Commission
March 24, 2004
Page 7 of 15

5. Advertising Commitment

Nextel Partners advertises and informs potential customers of its services and products by means of newspapers, television, radio, and its Internet website. Upon designation as an ETC in New York, Nextel Partners will continue to advertise the availability of its services, including all USF supported services, throughout its ETC designated service territory, and will additionally provide notices for posting at local unemployment, social security and welfare offices. Nextel Partners will advertise the availability and terms and conditions of Lifeline and Linkup programs so that eligible consumers can determine whether they are eligible to receive discounts and/or subsidies from these programs in conjunction with their Nextel Partners service. Nextel Partners will also locally publicize the construction of new facilities and relevant expansions of service coverage, so that consumers may be advised when Nextel Partners service is improved, or becomes available to customers in their localities.⁷

6. Public Interest

As mentioned in Nextel Partners' Petition, grant of ETC status to Nextel Partners will provide the benefit of increased competitive choice to customers in New York.⁸ Consistent with the Commission's *Virginia Cellular Order*, Nextel Partners' state-of-the-art advanced digital wireless service allows customers access to telecommunications and

⁷ See *Virginia Cellular Order* at ¶ 25.

⁸ See Nextel Partners Petition at § III; see also *Virginia Cellular Order* at ¶ 28.

Marlene H. Dortch
Secretary
Federal Communications Commission
March 24, 2004
Page 8 of 15

data services in situations “where they do not have access to a wireline telephone.”⁹ In fact, the Commission specifically recognized in the *Virginia Cellular Order* the crucial value of *mobility* that a wireless ETC can bring to rural, insular and high cost areas.¹⁰ Nextel Partners’ mobile wireless service will assist consumers in rural areas by providing a telecommunications link as they drive significant distances to places of employment, schools, and other community locations.¹¹ Moreover, the wireless access to emergency services represented by Nextel Partners’ service will help to “mitigate the unique risks of geographic isolation” associated with living in rural areas.¹²

Nextel Partners also offers a significantly larger local calling area than any of the incumbent carriers it competes against; accordingly, Nextel Partners’ customers will be subject to fewer toll charges.¹³ Nextel Partners attaches as **“Exhibit 3”** hereto four separate maps of its local calling areas for the State of New York, depicting local calling areas for customers in Syracuse, Rochester, Albany and Buffalo. As can be seen, in each case, Nextel Partners’ local calling area is very large: customers located in each of the four locations have local calling areas that cover most of the geographic area of the state. Customers in Syracuse, Rochester and Buffalo cover all of the westernmost portions of

⁹ See *Virginia Cellular Order* at ¶ 29.

¹⁰ *Id.* See also Separate Statement of Chairman Michael K. Powell.

¹¹ *Id.*

¹² *Id.*

¹³ See Nextel Partners’ Petition at § III. See also *Virginia Cellular Order* at ¶ 29.

Marlene H. Dortch
Secretary
Federal Communications Commission
March 24, 2004
Page 9 of 15

the state, whereas Albany customers effectively trade those westernmost portions for additional local coverage in the southeast corner adjacent to New York City. These local calling areas are far larger than local calling areas typically offered by rural ILECs.

Finally, consistent with the Commission's *Virginia Cellular Order*, grant of Nextel Partners' Petition will not significantly affect the size of the Universal Service Fund's High Cost Program.¹⁴

Conclusion

Reliance on Nextel Partners' commitments and representations made in its Petition for Designation and in this Supplement is reasonable and consistent with the public interest, the requirements of the Communications Act of 1934, as amended, and applicable case precedent. Nextel Partners' Petition for Designation in New York does not present any new or novel issues that were not addressed in the Commission's *Virginia Cellular Order*, and Nextel Partners has provided all of the specific commitments and information required by the Commission in that decision. Accordingly, Nextel Partners requests that the Commission grant its Petition on an expedited basis.

¹⁴ See *Virginia Cellular Order* at ¶ 31. Nextel Partners estimates that grant of its Petition will make Nextel Partners eligible to receive approximately \$732,000 in USF High Cost Support on an annual basis in its designated service territory in New York. The USF High Cost Program disbursed approximately \$2.98 Billion in calendar year 2002. See USAC Annual Report for 2002.

CATALANO & PLACHE, PLLC

Marlene H. Dortch
Secretary
Federal Communications Commission
March 24, 2004
Page 10 of 15

Respectfully submitted,

Nextel Partners of Upstate New York, Inc.
d/b/a Nextel Partners

By _____/signed/

Albert J. Catalano
Matthew J. Plache
Ronald J. Jarvis
Catalano & Plache, PLLC
3221 M Street NW
Washington, DC 20007
(202) 338-3200 voice
(202) 338-1700 facsimile

Counsel for Nextel Partners

EXHIBIT 1

CTIA Consumer Code for Wireless Services

EXHIBIT 2

Construction Plans for New York

Nextel Partners
Construction Plan for New York Designated Areas

<u>Location</u>	<u>Description</u>	<u>Capital Amount</u>
Hunter	New Site	\$ 181,000
Fort Ann	New Site - Expand Coverage	\$ 274,000
Corinth	New Site - Expand Coverage	\$ 147,000
Greenfield Center	New Site - Expand Coverage	\$ 191,000
Greenwich	New Site - Expand Coverage	\$ 204,000
Hoosick Falls	New Site - Expand Coverage	\$ 130,000
Schaghticoke	New Site - Expand Coverage	\$ 184,300
Troy	New Site - Network Quality	\$ 198,000
Fort Drum	New Site - Expand Coverage	\$ 169,000
Oswego	New Site - Expand Coverage	\$ 203,000
East Oswego	New Site - Expand Coverage	\$ 210,000
Syracuse-Westcott	New Site - Network Quality	\$ 249,000
Syracuse-Grant	New Site - Network Quality	\$ 237,000
Pittsford	New Site - Network Quality	\$ 228,000
Penfield	New Site - Network Quality	\$ 194,000
Rochester-Kennedy Twrs	New Site - Network Quality	\$ 247,000
Medina	New Site - Expand Coverage	\$ 151,000
Walden-Central	New Site - Expand Coverage	\$ 127,000
Cassadaga	New Site - Expand Coverage	\$ 178,000
Irondequoit	Antenna changes	\$ 7,000
Rochester-High Falls	Antenna changes	\$ 16,000
West Seneca	Antenna changes	\$ 8,000
New Baltimore	Add 2 sectors	\$ 72,000
Rochester-Lincoln Park	Antenna changes	\$ 3,000
Lancaster	Antenna changes	\$ 4,000
Waverly	Antenna changes	\$ 6,000
Nichols	Antenna changes	\$ 6,000
S. Bristol	Antenna changes	\$ 13,000
Syracuse Switch	Switch Capital for 19 additional sites	\$ 361,000
		<u>\$4,198,000</u>

As set forth above, Nextel Partners' projected budget for construction in the Designated Areas is approximately USD \$4.2 Million for improvements projected for completion in 2004. The improvements projected for 2004 include 19 new cell sites, two new sectors, switching equipment and changes to existing antennas in the specified locations that are intended to expand Nextel Partners' capability to serve customers within the Designated

Areas. These expenses far exceed the estimated USD \$61,000 in monthly USF subsidies that Nextel Partners may receive in New York when designated as an ETC.

EXHIBIT 3

Nextel Partners' local calling area maps for New York